

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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: :
In the Matter of : :
: :
Blaser Swisslube, Inc., : CONSENT AGREEMENT AND
: FINAL ORDER
Respondent. : :
: Docket No. TSCA-02-2015-9226
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), alleges that Blaser Swisslube, Inc. ("Blaser" or "Respondent") violated Section 5 of TSCA, 15 U.S.C. § 2612, and the regulations established under the authority of TSCA, set forth at 40 C.F.R. Part 720 (Premanufacture Notification) and that Respondent has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and Blaser agree that settling this matter respondent previously had entered into a Consent Agreement and

Final Order
substance for

(TSCA-02-2013-9226) with EPA in September 2013 for an unrelated chemical

REGIONAL HEARING
CLERK
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U.S. Environmental
Protection Agency-Reg 2

avoiding the costs and risks of litigation is in the public interest and is an appropriate means of resolving this case.

FINDINGS OF FACT

1. Respondent is Blaser Swisslube, Inc.
2. Respondent is a "person" within the meaning of 40 C.F.R. § 720.3(x).
3. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 720(t).
4. Respondent is an "importer" as that term is defined at 40 C.F.R. § 720.3(l) and 19 C.F.R. § 101.1.
5. Respondent owns, operates and/or controls the facility in and around 31 Hatfield Lane, Goshen, New York 10924 (hereinafter, "Respondent's facility").
6. In a letter dated July 7, 2014, Respondent voluntarily reported to EPA that it had "discovered a potential TSCA violation in connection with the import and commercial use of a [certain] product."
7. In the July 7, 2014 letter, Respondent noted that it had imported a chemical which was "not listed on the publicly-available TSCA inventory."
8. In the July 7, 2014 letter, Respondent wrote that "TSCA 5 requires that an importer notify EPA of its intent to import a chemical substance into the United States..." and that Respondent "hereby voluntarily discloses imports of [a new chemical substance] into the United States..."
9. Respondent promptly quarantined its supply of the chemical substance.
10. Respondent did not notify EPA of its intent to import a chemical substance into the United States at least 90 days prior to such importation.
11. Respondent previously had imported...

nal proceedings.

LAW

nces and new chemical substances and
the regulations promulgated pursuant to

complaint so as to avoid the costs associated with additional

CONCLUSIONS OF

1. Respondent is an importer of chemical substances and is subject to the requirements of Section 5 of TSCA and

violations of Sections 5 and 13 of TSCA.

12. Respondent's imported chemicals which are the subject of this action did not appear on the TSCA Chemical Substance Inventory during time relevant to this action (2011 to 2014).

13. Subsequent to the receipt of Respondent's July 7, 2014 self-disclosure letter, a representative of EPA called Respondent and discussed the disclosure.

14. By letter dated August 11, 2014, following up on the conversation noted in paragraph 12, above, Respondent submitted hardcopies and a CD of the shipment paperwork for Respondent's imports of the chemical substance between 2011 and 2014.

15. The specific chemicals that are covered by this Agreement are Confidential Business Information ("CBI") and are therefore identified herein simply as those chemicals referenced in Respondent's July 7, 2014, letter and August 11, 2014 letter and attachment to Linda Longo and Michael Bious, respectively, both EPA representatives.

16. Respondent did not notify EPA of its intent to import the chemical substance into the United States prior to importing it between 2011 and 2014.

17. Respondent subsequently sought and received from EPA on September 25, 2014 a Low Volume Exemption ("LVE") pursuant to 40 C.F.R. § 723.50 for the subject chemical substance.

18. Subsequently, on October 21, 2014, Respondent received EPA permission to distribute the quarantined supply.

19. The parties have agreed to settle this matter without the issuance of a formal

Consent Agreement

and (3) and

and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)

Section 5 of TSCA set forth at 40 C.F.R. Part 720.

2. Section 15(1)(B) and (C), 15 U.S.C. §§ 2614(1)(B) and (C), provide that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604, or the regulations promulgated thereunder.

3. As an importer, Respondent is required to submit to EPA a Premanufacture Notification 90 days before importing a new chemical substance, as specified at 40 C.F.R. Part 720.

4. Respondent's failure to submit a Premanufacture Notification, as described in the Findings of Fact, paragraph 8, above, and in accordance with the requirements of 40 C.F.R. Part 720 is a violation of TSCA Sections 5 and 15, 15 U.S.C. §§ 2607 and 2614.

5. In the July 7, 2014 letter, Respondent voluntarily discloses "violations of TSCA § 5 notification requirements ..."

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed by and between the parties, that Respondent voluntarily and knowingly agrees to comply with the following terms:

1. Respondent: a) admits that EPA has jurisdiction to commence a civil administrative proceeding for the self-disclosed violations described in the "Findings of Fact" and "Conclusions of Law" sections, above; b) admits the specific Findings of Fact and Conclusions of Law contained in this Consent Agreement; c) consents to the assessment of the civil penalty as set forth below; d) consents to the issuance of the Final Order accompanying this Consent Agreement; e) Respondent represents that it is currently in compliance with the requirements of TSCA and its implementing regulations; and f) Respondent agrees to make best efforts to maintain such compliance with TSCA and its implementing regulations.

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **eighty-nine thousand seven hundred fifty dollars (\$89,750)**, payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, as set forth in the caption on the first page of this document.

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"
- 6) Name of Respondent: Blaser Swisslube, Inc.
- 7) Docket Number TSCA-02-2015-9226

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Carl R. Howard, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar**

days after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

3. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement (upon full payment of the civil penalty due under paragraph 2) of the civil liabilities under Section 16(a) of TSCA, 15 U.S.C. § 2601 *et seq.*, that attach or might have attached as a result of the violations described in the “Findings of Fact” and “Conclusions of Law” sections, above, including all claims that could have been brought by EPA for the matters disclosed in the July 7, 2014 and August 11, 2014 letters submitted by Respondent. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

4. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the determinations contained in the "Findings of Fact" and "Conclusions of Law" sections, above or on the accompanying Final Order. Respondent further waives its right otherwise to contest all such determinations or to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

6. The civil penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law.

7. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.


9. Each party shall bear its own costs and attorney fees in this matter.

10. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

Blaser Swissslube, Inc.
DOCKET No. TSCA-02-2015-9226

RESPONDENT:

BY:


Blaser Swissslube, Inc.

NAME: CARSTEN WITTHUSGE
(PLEASE PRINT)

TITLE: GENERAL MANAGER - AMERICAS

DATE: 9/23/2015

COMPLAINANT:

Patrick Durack
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007
*PATRICK DURACK
FOR DORE LAPOSTA*

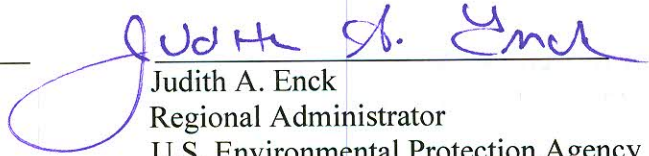
DATE: SEPTEMBER 23, 2015

Blaser Swisslube, Inc.
DOCKET No. TSCA-02-2015-9226

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in settlement of EPA's Administrative Action bearing Docket No. TSCA-02-2015-9226, issued in In the Matter of Blaser Swisslube, Inc., is hereby approved, incorporated herein, and issued as an Order pursuant to Section 16 of TSCA. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

DATE: 9.24.15


Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

Blaser Swisslube, Inc.
DOCKET No. TSCA-02-2015-9226

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing docket number TSCA-02-2015-9226, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Andrew N. Davis Esq.
Shipman & Goodwin, LLP
Counselors At Law
One Constitution Plaza
Hartford, CT 06103-1919

Dated: 11/04, 2015
New York, NY

